

Amendment
U.S. Patent Application No. 10/693,607

REMARKS

By way of this Amendment, claim 9 is amended and claims 12 and 32-42 are canceled. Claims 1-8 and 18-31 were previously canceled as being directed to non-elected inventions. Support for the amendment to claim 9 can be found throughout the specification and drawings. Accordingly, claims 9-11 and 13-17 are pending in the subject application.

In the Office Action, newly submitted claims 32-42 were alleged as being directed to an invention that is independent or distinct from the invention originally claimed. Claims 32-42 were withdrawn by the Examiner from consideration as being directed to a non-elected invention. As indicated above, Applicants have canceled claims 32-42 in this Amendment.

In the Office Action, the Information Disclosure Statements filed January 11, 2005 and April 28, 2006 were alleged to fail to comply with 37 C.F.R. 1.98(a)(3), because neither included a concise explanation of the relevance of each patent listed that is not in the English language. Prior to the Examiner's review of this Amendment, Applicants will submit a Concise Explanation of Relevance for the non-English language references for which an abstract or translation is not available.

In the Office Action, the drawings were objected to as failing to show every feature of the invention specified in the claims. In particular, it was stated that the recesses 2184 communicating with the second member of the band portion must be shown or the features canceled from the claims. Applicants respectfully reference Fig. 58 in the application in which reference numeral 2184 designating recesses is shown. Applicants respectfully request that the objection to the drawings be withdrawn.

In the Office Action, the specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. In particular, it was stated that the specification fails to disclose "the first portion having a thickness greater than the second portion as in claim 12." Applicants respectfully submit that the specification contains multiple references to the thickness of different portions. Applicant notes that the concept of different thicknesses and some of the reasons or benefits thereof are disclosed in at least the following paragraphs in the

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specification: 0089, 0163, 0164, 0183, 0184, 0187, and 0194. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

Claims 9-17 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner indicated that no reference to a first portion of the ear and a second portion of the ear as claimed in claim 1 can be located and that it is unclear to the Examiner which first and second portions the Applicant is referencing.

Applicants have assumed that the reference to claim 1 in the Office Action means claim 9. In reviewing claim 9, the claim recites in part a frame including a band portion and an ear portion and that the ear portion includes a first portion and a second portion. Applicants submit that the “first portion” and “second portion” recited in claim 9 are different portions of the ear portion of the frame. Applicants further submit that the term “end portion” is not recited in claim 9 and that there is no reason for reading the term into the claim. Applicants respectfully submit that claim 9 is not indefinite and request that the rejection of claim 9 be withdrawn.

In the Office Action, claims 9, 16 and 17 are indicated as being rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 2,149,383 to Bean, but claims 10, 11, 14 and 15 are also discussed in the same paragraph. In the following section, claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over Bean and claim 13 is also rejected under 35 U.S.C. §103(a) as being unpatentable over Bean in view of U.S. Patent No. 6,499,146 to Bavetta. Applicants have assumed that the first reference to claim 13 should be interpreted as a reference to claim 12.

In the Office Action, Bean is characterized as illustrating an ear warmer frame including a band portion 18 and an ear portion 7. With respect to claim 12, the Office Action recites that “[h]owever, Bean does not disclose the ear frame having a first portion thicker than the second portion. The applicant fails to disclose criticality or unexpected results from the various thicknesses being placed on the first and second portion, there for it would have been obvious to one of ordinary skill in the art to make the first portion thicker than the second portion as a design choice.”

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Applicants respectfully disagree with that position on several points. First, Applicants respectfully submit that the specification discloses the reasons for portions having different thicknesses. For example, paragraph [0163] in the specification recites: “Different embodiments of the ear warmer apply different amounts of pressure or force to a user's head. Additionally, different embodiments of the ear warmer apply the pressure or force to different locations on the user's head. Specifically, the pressure and pressure location can be adjusted between different embodiments of the ear warmer by modifying the band portion and/or the ear portions. In other words, the amount of pressure applied and the pressure location for one embodiment of an ear warmer is different than the amount of pressure applied and the pressure location for an ear warmer of another embodiment. For example, the applied pressure for one embodiment is less than or greater than the applied pressure for another embodiment having lesser or greater, respectively, the thickness and/or width of the band portion, but substantially equal thickness and width of the ear portions. Alternatively, the applied pressure for one embodiment having ear portions of a certain thickness is less than the applied pressure for another embodiment having ear portions of a lesser thickness. Additionally, one embodiment of an ear portion has a certain thickness and is less flexible than an ear portion of another embodiment having a thickness greater than the thickness of the ear portion of the one embodiment. Additionally, one embodiment of an ear portion has a certain thickness and applies pressure or force to a user's head over a smaller area than an embodiment of an ear portion having a lesser thickness than the ear portion of the one embodiment. Embodiments of ear portions which apply pressure to a large area of a user's head is more comfortable than embodiments of ear portions that apply pressure to a small area of the user's head.”

Also, paragraph [0164] in the specification recites: “The pressure that is applied by an ear warmer of a particular embodiment to a user's head over a particular area is a function of the thickness of the material and the surface area dimension over that area of the ear portion. For example, if one embodiment of the ear warmer is manufactured with an ear portion that is thinner than an ear portion of a further embodiment, then the clamping pressure produced by the ear warmer of the one embodiment will be less than the clamping pressure produced by the ear

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warmer of the further embodiment. Additionally, if one embodiment of the ear warmer is manufactured with a smaller overall size than the overall size of the ear warmer of a further embodiment, then the clamping pressure produced by the ear warmer of the one embodiment will be less than the clamping pressure produced by the ear warmer of the further embodiment. The ear warmer, however, should apply sufficient pressure to the user's head to retain the ear warmer on the user."

Further, paragraph [0194] in the specification recites: "In one embodiment, a substantial amount (such as 50% or more) of the first ear portion 2102 along its length L of the first ear portion 2102 is configured to flex or bend when the ear warmer 2000 is disposed on a head of a user. In particular, part or all of the projecting portions and the extension member have tapered configurations and curved profiles or configurations that allow the ear portion to flex or bend. The curved configuration of the ear portion 2102 results in the flexing of the ear portion along the length of the ear portion, thereby distributing the flexing forces along a substantial portion of the length of the ear portion. When the ear warmer 2000 is disposed on the user's head, a clamping force is applied to the user's head and the reactionary force on the ear portion 2102 is shown in FIG. 56. The curvature of the ear portion 2102 alone or in combination with other features of the ear portion 2102 allow the ear portion to flex along a substantial portion of its length (such as 50% or more) when the ear warmer 2000 is disposed on a head of a user. The flexing is also enhanced by the reduced thickness of the ear portion. Thus, as pressure is applied to the ear portion, the ear portion flattens out so that an increased amount of the ear portion is proximate to and applying pressure to the user's head and more pressure is applied to the end 2114. In particular, the extension member can follow the contour of the face and bone structure of the user. The first ear portion 2102 in its flexed configuration is illustrated in FIG. 56 in dashed lines."

Second, Applicants respectfully submit that one of ordinary skill in the art would not modify the ring-like wire frames 7 of the ear-muff disclosed in Bean. An ear muff 5 (illustrated in Fig. 2 of Bean) is stretched over and mounted onto a wire frame 7 as illustrated in Figs. 5 and 7 of Bean. The modification of a wire frame 7 in Bean so that it includes portions with different

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thicknesses would likely change the properties and characteristics of the wire frame and thus, would not support the ear muff 5 as disclosed in Bean.

Applicants have amended independent claim 9 to recite in part that "a thickness of the first portion of the ear portion is greater than a thickness of the second portion of the ear portion." Applicants respectfully submit that independent claim 9, as amended, is allowable over the prior art of record, and that dependent claims 10, 11, and 13-17 are allowable at least for their dependency on claim 9.

In view of the foregoing, the Examiner is respectfully requested to find claims 9-11 and 13-17 to be in condition for allowance. However, if for any reason the Examiner feels that the application is not now in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney to discuss any unresolved issues and to expedite the disposition of the application.

Applicants hereby petition for any extension of time that may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

Respectfully submitted,

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